

ORIGINAL

RECEIVED & FILED

1 CURTIS R. TINGLEY (SBN 112322)
ctingley@tingleyllp.com
2 BRUCE C. PIONTKOWSKI (SBN 152202)
bpiontkowski@tingleyllp.com
3 JONATHAN A. MCMAHON (SBN 239370)
jmcmahon@tingleyllp.com
4 TINGLEY PIONTKOWSKI LLP
10 Almaden Boulevard, Suite 430
5 San Jose, California 95113
Telephone: (408) 283-7000
6 Facsimile: (408) 283-7010

'09 FEB 12 AM 1:39

U.S. BANKRUPTCY COURT
MARY A. SMITH, CLERK

7 Attorneys for Palm Terrace Claimants

8 UNITED STATES BANKRUPTCY COURT
9 DISTRICT OF NEVADA

11 In re:

12 USA COMMERCIAL MORTGAGE
13 COMPANY,

14 USA CAPITAL REALTY ADVISORS,
15 LLC,

16 USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

17 USA CAPITAL FIRST TRUST DEED
18 FUND, LLC,

19 USA SECURITIES, LLC,

20 Debtors.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725-LBR

**DECLARATION OF JONATHAN A.
MCMAHON IN SUPPORT OF THE PALM
TERRACE CLAIMANTS' OPPOSITION
TO THE OMNIBUS OBJECTIONS OF
USACM TRUST TO PROOFS OF CLAIM
BASED ON PALM TERRACE
LITIGATION**

**Date: February 20, 2009
Time: 9:30 a.m.
Courtroom 1
Honorable Linda B. Riegler**

23 **Affects:**

24 All Debtors
X USA Commercial Mortgage Company
USA Capital Realty Advisors, LLC
25 USA Capital Diversified Trust Deed Fund, LLC
USA Capital First Deed Fund, LLC
26 USA Securities, LLC

1 I, Jonathan A. McMahon declare:

2 1. I am an attorney licensed to practice law in all the courts of the State of California, and
3 an associate with the law firm of Tingley Piontkowski LLP, counsel for Claimants PALM
4 TERRACE, LLC; FIRST INTERSTATE RESOURCE MANAGEMENT, INC.; FIDELITY
5 MANAGEMENT ALLIANCE, INC.; GLOBAL PROPERTY NETWORK, INC.; WOW ENTERPRISES,
6 INC.; CATALYST FUNDING CORPORATION; ADVISOR FINANCIAL ALLIANCE; RUSSELL W.
7 GRAY; JOHN R. OSBORNE; ROBERT HELMS; JAMES THYLIN; CAROL GRAY; CONNIE FINCH;
8 DAVID N. KANG; JAMES DOUGLAS; CATHI CIARDELLA; KEL SAITO; and BOBBY FRED
9 HELMS (the "Palm Terrace Claimants") herein, on whose behalf I make this declaration. If called
10 as a witness, I would competently testify to the following facts, all of which are within my
11 personal knowledge, except those alleged on information and belief, and as to those facts, I
12 believe them to be true.

13 2. Attached hereto as Exhibit A is true and correct copy of an invoice from the law firm
14 of Adleson, Hess & Kelly for services rendered in connection with the defense of the Palm
15 Terrace Claimants in the Palm Terrace Litigation (Superior Court of California, County of Santa
16 Clara, Case No. 1-06-CV-057298).

17 3. The amount due for services rendered indicated on the invoice attached hereto as
18 Exhibit A, \$184,965.74, was not paid by any insurance carrier for any of the Palm Terrace
19 Claimants. I am informed and believe that the \$184,965.74 was incurred by WOW Enterprises,
20 Inc. in connection with the joint defense of the Palm Terrace Claimants in the Palm Terrace
21 Litigation and that the Palm Terrace Claimants have assigned their claims in these bankruptcy
22 proceedings to claimant WOW Enterprises, Inc. (Claim # 10725-00918).

23 4. Attached hereto as Exhibit B is a true and correct copy of the transcript of the
24 deposition of Andrew Hantges. Hantges gave this deposition testimony as a defendant in the
25 Palm Terrace Litigation.

26 5. Beginning on page 9, line 12 of the Hantges transcript attached hereto as Exhibit B,
27 Hantges testified that he was the mortgage broker for the Palm Terrace Apartments transaction.

28 6. Beginning on page 11, line 8 of the Hantges transcript attached hereto as Exhibit B,

1 Hantges testified that he was a mortgage broker for USA Capital, also known as USA
2 Commercial Mortgage.

3 7. Exhibit 1 to the Hantges deposition are Multifamily Rent Rolls which, beginning on
4 page 45, line 4 of the Hantges transcript, Hantges testified that he filled out and signed for the
5 Palm Terrace Plaintiffs' lender, LaSalle Bank. The Palm Terrace Plaintiffs alleged in the Palm
6 Terrace Litigation that the information contained in these Rent Rolls was false and formed the
7 basis for their damages arising out of the Palm Terrace transaction.

8 8. Exhibits 5 and 6 to the Hantges deposition are emails from Hantges which, beginning
9 on page 45, line 4 of the Hantges transcript, Hantges testified he sent to one of the Palm Terrace
10 Claimants. The emails attach Rent Rolls which formed the basis of the Complaint in the Palm
11 Terrace Litigation. The emails are from the email address ahantges@usacapitalcorp.com and
12 contain the signature block "Andrew Hantges, CCIM, USA Commercial Mortgage."

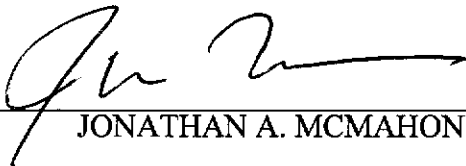
13 9. Exhibit 9 to the Hantges deposition are Income and Expense Statements which,
14 beginning on page 76, line 9 of the Hantges transcript, Hantges testified that he filled out and
15 signed for the Palm Terrace Plaintiffs' lender, LaSalle Bank. The Palm Terrace Plaintiffs alleged
16 in the Palm Terrace litigation that the information contained in these Income and Expense
17 Statements was false and formed the basis for their damages arising out of the Palm Terrace
18 transaction.

19 10. Exhibit 12 to the Hantges deposition are Collateral Information Questionnaires which,
20 beginning on page 87, line 6 of the Hantges transcript, Hantges testified that he filled out and
21 signed for the Palm Terrace Plaintiffs' lender, LaSalle Bank. The Palm Terrace Plaintiffs alleged
22 in the Palm Terrace litigation that the information contained in these Questionnaires was false and
23 formed the basis for their damages arising out of the Palm Terrace transaction.

24 11. Exhibit 32 to the Hantges deposition are Letters of Intent which, beginning on page
25 118, line 4 of the Hantges transcript, Hantges testified he drafted and sent to the Palm Terrace
26 Plaintiffs regarding their loan for the Palm Terrace property. The Letters of Intent are on USA
27 Commercial Mortgage letterhead and indicate that Andrew Hantges is a Vice President of USA
28 Commercial Mortgage.

1 I declare under the penalty of perjury under the laws of the United States of America that
2 the foregoing is true.

3 Executed on February 11, 2009, at San Jose, California.

4
5 
6 JONATHAN A. MCMAHON